Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185

To: The Commission

COMMENTS

PUERTO RICO TELEPHONE COMPANY

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SUMMARY

Puerto Rico Telephone Company ("PRTC") urges the Commission to revisit its proposals regarding interconnected traffic between the networks of local exchange carriers ("LECs") and commercial mobile radio service ("CMRS") providers in light of the provisions of the Telecommunications Act of 1996. The nature and scope of the requirements of the Act have rendered many of the proposals in the NPRM incompatible with the duties of the Commission under the Act.

For example, the authority delegated to the Commission by Congress comprehends state regulation of the various interconnection rights and duties called out in new section 251. Insofar as that state regulation is consistent with the requirements of section 251 and does not substantially prevent implementation of the requirements of that section, the Commission may not preempt it. Plainly, Congress determined that a broad role for State regulation is not inconsistent with the development of national telecommunications policy.

Thus, the implications of the Act are sufficiently fundamental to warrant a substantial revision of the Commission's proposals. Moreover, under the Act interconnection rules must be established for all telecommunications service providers, not just for CMRS interconnection. Against this background, PRTC urges the Commission to revisit its proposals in the context of a comprehensive proceeding to implement the interconnection requirements of new section 251 scheduled for April 1996.

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COMMENTS

Puerto Rico Telephone Company ("PRTC"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, submits these Comments in response to the above-captioned Notice of Proposed Rulemaking ("NPRM") adopted by the Commission on December 15, 1995 and released on January 11, 1996 and the subsequent Order and Supplemental Notice of Proposed Rulemaking ("Supplemental NPRM") adopted and released by the Commission on February 16, 1996.

I. GENERAL COMMENTS

PRTC urges the Commission to revisit its proposals regarding interconnected traffic between the networks of local exchange carriers ("LECs") and commercial mobile radio service ("CMRS") providers in light of the provisions of the Telecommunications Act of 1996. That Act reserves for negotiating parties and the States many of the determinations to be made in implementing specific LEC-CMRS interconnection arrangements. In this regard, the Commission's proposals outlined in the NPRM — particularly its jurisdictional discussions — are inconsistent with the new statutory scheme. Rather than attempt to conclude this

proceeding on the basis of the existing NPRM and separately from the Commission's general interconnection proceeding contemplated for April 1996, the Commission should consider combining the two proceedings to implement more efficiently the requirements of this sweeping new law.

In the Supplemental NPRM, the Commission seeks comment regarding the implications of the Telecommunications Act of 1996 on the CMRS interconnection proposals outlined in the NPRM. Supplemental NPRM at ¶ 6. In brief, the implications of the Act are sufficiently fundamental to warrant a substantial revision of the Commission's proposals. The nature and scope of the requirements of the Act have rendered many of the proposals in the NPRM incompatible with the duties of the Commission under the Act. As a result, PRTC urges the Commission to combine the instant CMRS interconnection proceeding with the more general proceeding to implement the interconnection requirements of the Act contemplated for April 1996.

In the Telecommunications Act of 1996, Congress establishes a broad new framework for Federal and State regulation of telecommunications interconnection. New sections 251 and 252 of the Communications Act provide for Commission implementation of the interconnection principles described there, but forbid the Commission from preempting State access and interconnection

regulations that are not inconsistent with those statutory principles. The result is a carefully delineated scheme of broad Federal regulation of interconnection principles overlaying State regulation of the same subject matter.

Specifically, new section 251(d)(1) of the Communications Act directs the Commission to complete within six months regulations to implement the requirements of section 251. Those requirements include the general section 251(a) duties of all telecommunications carriers to interconnect with the facilities of other telecommunications carriers as well as the more specific section 251(b) duties of LECs to provide resale, number portability, dialing parity, access to rights-of-way, and reciprocal compensation. Section 251(c) further establishes the duty of all incumbent LECs to negotiate an interconnection agreement with a telecommunications carrier in good faith and also to provide interconnection, unbundled access, resale, and collocation.

Although the Commission is charged under section 251(d)(1) with promulgating regulations to implement these duties, section 251(d)(3) limits the reach of those regulations. Section 251(d)(3) provides:

> In prescribing and enforcing regulations to implement the requirements of this section, the Commission shall not preclude the enforcement of any regulation, order, or policy of a State commission that —
>
> (A) establishes access and interconnection obligations of local exchange carriers;
>
> (B) is consistent with the requirements of this section; and
>
> (C) does not substantially prevent implementation of the requirements of this section and the purposes of this part.

Telecommunications Act of 1996, Pub. L. No. 104-104, § 101 (new section 251(d)(3)). On this matter the Conference Report accompanying the conformed legislation is clear, "New section 251(d) requires the Commission to adopt regulations to implement new section 251 within 6 months, and states that nothing precludes the enforcement of State regulations that are consistent with the requirements of new section 251."[1]

Thus, in establishing regulations to implement section 251, the Commission must leave ample room for consistent state regulation of the same subject matter. As the Supreme Court noted in 1986:

> While it is certainly true, and a basic underpinning of our federal system, that state regulation will be displaced to the extent that it stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress, it is also true that a federal agency may preempt state law only when and if it is

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1. H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. 122 (1996).

> acting within the scope of its congressionally delegated authority.

Louisiana Public Service Commission v. FCC, 476 U.S. 355, 374 (1986) (citations omitted). In this instance, the authority delegated to the Commission by Congress comprehends state regulation of the various interconnection rights and duties called out in new section 251. Insofar as that state regulation is consistent with the requirements of section 251 and does not substantially prevent implementation of the requirements of that section, the Commission may not preempt it.

Since the section 251(d)(3) preservation of state authority applies to the Commission "[i]n prescribing and enforcing regulations," the Commission's regulations adopted pursuant to section 251(d)(1) necessarily must leave room for consistent state regulation of the same area. For example, as noted above, section 251(d)(3)(B) provides that the Commission may preempt state regulation that is inconsistent with section 251 of the Telecommunications Act. In contrast with that provision, section 252(c)(1) requires State commissions resolving interconnection disputes by arbitration to ensure that the arbitrated agreements "meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251." Similarly, section 252(e)(2)(B) provides that a State commission may reject an arbitrated interconnection agreement submitted for

approval only if "it finds the agreement does not meet the requirements of section 251, including the regulations prescribed by the Commission pursuant to section 251." It follows that State interconnection and access regulations must answer only to the requirements of the Telecommunications Act, not Commission regulations. It follows, therefore, that the Commission must develop regulations under section 251 that do not effectively preempt valid State provisions.

Against this background, PRTC urges the Commission to revisit its proposals in the context of a comprehensive proceeding to implement the interconnection requirements of new section 251 scheduled for April 1996. The provisions of the Telecommunications Act of 1996 render the Commission's current proposals dramatically out of step with the legal environment to be faced by LECs and CMRS providers in the wake of the Commission's April 1996 proceeding. Thus, the Commission should not undertake to resolve the two efforts separately.

Indeed, separate interconnection policies for LEC-CMRS interconnection on one hand and non-CMRS interconnection on the other would run counter to the requirements of the Telecommunications Act. New section 251(c)(2)(D) establishes the duty of all incumbent LECs to provide interconnection "on rates, terms, and conditions that are just, reasonable, and

nondiscriminatory . . . ." Similarly, new section 252(i) requires:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section [252] to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

Plainly, Congress did not intend to establish CMRS-specific interconnection requirements. A Commission policy of establishing competitively advantageous (or disadvantageous) interconnection rights for CMRS providers alone would be unworkable under the new regime. A generic interconnection proceeding, on the other hand, will help to ensure uniformity of result based on consistent proposals and a consolidated record.

Should the Commission elect to pursue the proposals outlined in the NPRM, however, PRTC urges the Commission to give to State regulators the full latitude intended by the Act. In this regard, the Commission has offered three alternative approaches to implementing the proposed interconnection policies. The first approach would be to promulgate a "federal interconnection policy framework" that would govern interstate CMRS interconnection, but serve only as a model for intrastate interconnection matters. NPRM at ¶ 108. The second approach would be to institute a "mandatory federal policy framework" governing both interstate and intrastate CMRS interconnection, but to permit States to

choose from a number of methods by which to implement that policy. Id. at ¶ 109. The final approach would be to establish "specific federal requirements for interstate and intrastate LEC-CMRS interconnection arrangements." Id. ¶ 110.

PRTC urges the Commission to pursue a version of the first approach modified to conform to the requirements of new sections 251 and 252 of the Communications Act. Under this approach, the Commission would establish federal CMRS interconnection policies for interstate purposes. This would provide a model for states to follow in implementing state interconnection requirements. However, states could deviate from the model so long as their policies are consistent with the requirements of section 251 of the Act. Id. at ¶ 108. Such an approach has a number of advantages.

First, the federal model approach would provide a generic implementation of the new Act's interconnection requirements while reflecting appropriate deference for the authority of the States to govern telecommunications service providers within their States. This authority expressly has been recognized — or "fenced off" — by Congress with certain limitations. For example, in addition to the express reservation of authority for states in new section 251(d)(3), Congress left a great many telecommunications policy issues to be decided by the States in

the context of arbitrating interconnection agreement disputes,[2] establishing interconnection rates,[3] and approving Bell operating company statements of generally available terms.[4]

In particular, new section 252(e) provides that a State commission must approve or reject an interconnection agreement reached through negotiation or arbitration. If a State commission fails to act altogether, section 252(e)(5) directs the Commission to assume the responsibilities of that State on that matter. If a State commission makes a determination on the matter, however, section 252(e)(6) provides that a Federal district court — not another regulator such as the Commission — may assess the State's compliance with the requirements of the Act. Plainly, Congress determined that a broad role for State regulation is not inconsistent with the development of national telecommunications policy.

Moreover, the federal model approach gives the States flexibility to address local market conditions in a way that cannot be duplicated on the Federal level. By providing for coexisting Federal and State regulation on interconnection matters — and for State commission review of interconnection

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2. See new sections 252(b), 252(c), and 252(e).

3. See new sections 252(c)(2) and 252(d).

4. See new section 252(f).

agreements — Congress recognized that local conditions should guide the implementation of broad Federal policy. Thus, for example, a State commission implementing the Federal dialing parity requirement could do so on a timetable well-suited to local conditions. Adopting a federal model approach, therefore, will permit the States to guide many of the specific telecommunications policy matters left for them by Congress.

II. COMPENSATION FOR INTERCONNECTED TRAFFIC BETWEEN LECs AND CMRS PROVIDERS' NETWORKS

A. Compensation Arrangements

3. Pricing Proposals

Against the background of the Telecommunications Act of 1996, the Commission's proposals outlined in the NPRM are inconsistent with the statutory scheme granting broad regulatory authority to the States. This is particularly evident in connection with the Commission's interconnection pricing proposals. At bottom, the Commission does not have the authority to establish rates for CMRS-LEC interconnection (unless a State commission fails to act); that power is reserved expressly for the States under the new Act.[5]

The Telecommunications Act of 1996 requires non-negotiated interconnection compensation to be cost-based. In other words, neither the Commission nor a State commission may dictate compensation on any other basis. Moreover, new section 251(c)(2)(D) of the Communications Act establishes the duty of all incumbent LECs to provide interconnection

> on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the [negotiated] agreement and the requirements of this section and section 252.

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5. See new sections 252(c)(2) and 252(d).

In turn, new section 252 provides for State commission arbitration of interconnection negotiation disputes and new section 252(c)(2) provides that, in performing that duty, State commissions shall "establish any rates for interconnection, services, or network elements according to subsection (d)." New section 252(d)(1) directs that:

> Determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment for purposes of subsection (c)(2) of section 251, and the just and reasonable rate for network elements for purposes of subsection (c)(3) of such section—
>
> (A) shall be—
>
> (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and
>
> (ii) nondiscriminatory, and
>
> (B) may include a reasonable profit.

Telecommunications Act, § 101 (emphasis added).

Plainly, then, under new sections 252(c)(2) and 252(d) State commissions — not the FCC — are given the responsibility to "establish any rates for interconnection." The Commission's interconnection policies must leave this role to the State commissions[6]. Moreover, not even the State commissions have the authority to dictate interconnection compensation on anything

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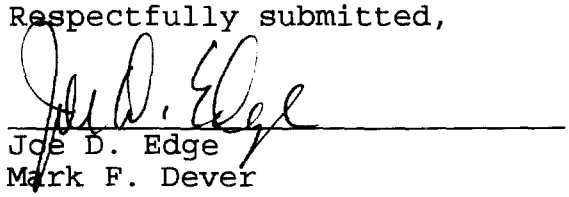
6. Although the rules of construction appended to this section permit arrangements based on mutual recovery of costs through offsetting reciprocal payments (or the waiver of payments), they do not appear to permit the Commission to dictate such an arrangement. See new § 252(d)(2)(B).

other than a cost basis. Thus, as with the other areas of proposed Commission regulation, the pricing concepts set forth in the NPRM do not survive within the new statutory environment. Accordingly, the proposals in the NPRM must be reconsidered.

CONCLUSION

For these reasons, PRTC urges the Commission to revisit its LEC-CMRS interconnection proposals in the context of a more comprehensive implementation of the requirements of the Telecommunications Act of 1996.

Respectfully submitted,



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